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House of Commons Debates

SPEECH

OF



HON. SIR A. P. CARON, M.P.

ON

GOVERNOR GENERAL'S WARRANTS

OTTAWA, SEPTEMBER 8, 1896

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House of Commons Debates

FIRST SESSION—EIGHTH PARLIAMENT

SPEECH

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ON

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OTTAWA, TUESDAY, 8TH SEPTEMBER, 1896

Sir ADOLPHE CARON. Mr. Speaker, just before recess I rose to address a few remarks to the House upon a subject which I consider of grave importance. At the outset I desire to say, in reply to the hon. member for North Norfolk (Mr. Charlton), whom I regret not to see in his seat, that I disclaim the slightest intention of prolonging this debate for the purpose of extending the session beyond thirty days, as the hon. gentleman charged the Opposition with doing. I think it is an unworthy charge to make on the part of the hon. gentleman against the members on this side of the House; and I think that it comes with very bad grace from the lips of an hon. gentleman who, within the recollection of the older members of this House, and under circumstances which will be remembered, to carry out obstruction such as this Parliament or any other parliament has never known, did not hesitate to bring the Holy Book into requisition in order to prolong a discussion which led, probably, to the difficulty which we are called upon to discuss to-night. Sir, it is not the wish on this side of the House to prolong the debate or to extend the session; but we consider that, as representatives of the people, we have duties to perform, and that we would be recreant to those duties if, whether sitting on your right or sitting on your left, we did not stand up here to discuss, from our own standpoint and according to our own judgment, questions which we consider affect the interests of the people. Sir, it has been my high privilege

to occupy a seat in this House of Commons, as a representative of the people, since 1873, and it is impossible for me to recollect during that time an occasion when, according to my judgment, a more violent attack has been made upon parliamentary institutions and the privileges of a people living under such a constitution as obtains in Canada. Let me say at once that my object in addressing these few remarks to the House was not so much to attack the Government as to vindicate the rights of Parliament, without which no Government could be of any use to the people of Canada. If there was any reason that could have induced me to overlook the action of the Government, it was that the money which was obtained by the warrants of the Governor General, was for the purpose of paying the civil servants what they had earned. Sir, I consider that we have in this country a civil service equal to that of any other country; and I would be prepared to go as far as possible to protect their interests, and to prevent them from suffering in the slightest degree from delay in paying them the amounts which are due them for the valuable services they render to the country. Let me say further, that in this case it is not the Conservative party which is responsible if the civil servants were kept waiting for the salaries which they were entitled to receive. On two different occasions the Conservative party when sitting on the Treasury benches during the last days of the session of an expiring Parliament,

appealed to hon. gentlemen opposite to provide for these requirements, which they were in a position then to do, without making an attack such as has been made on the constitution. Hon. gentlemen know well that we asked them whether, if they were not prepared to vote the whole Estimates, they would not consent to vote whatever portion they thought desirable, but they refused, and subsequently when the responsibility of government was thrown upon their shoulders, they considered the payment of salaries to the civil servants was a matter of sufficient importance to justify them in breaking through constitutional precedents. Hon. gentlemen at that time would not agree to the proposition made from the then occupants of the Treasury benches; they were wholly unreasonable, they refused every proposal. At that time it would have been very easy for hon. gentlemen to impose such conditions on granting a portion of the Estimates that it would have been impossible for the Government to have utilized the money in a manner different from that provided by the constitution and approved by the people through their representatives in this House. The Government of that day did not, of course, expect the confidence of hon. gentlemen opposite; still those hon. gentlemen were well aware that there were constitutional rules which could not be broken and precedents which could not be violated, and yet hon. gentlemen opposite so soon as they occupied the Treasury benches acted unconstitutionally, for after refusing last session to permit the granting of supplies for the payment of the civil service, they resorted to the issue of a Governor General's warrant for that purpose. I claim that English as well as Canadian precedents indicated to hon. gentlemen the course which they should have followed under the circumstances, admitting, as stated by the hon. member for North Norfolk (Mr. Charlton), that hon. gentlemen opposite had not confidence in the then Government and were not prepared to confide into its hands money voted under the Estimates. Under constitutional precedents which cannot be controverted or ignored, hon. gentlemen opposite should have accepted the proposition made by the Government of that day, when it would not have been necessary so soon as they obtained possession of the Treasury benches to have applied to the Governor General to issue his warrant, even the very day before Parliament met. As regards the duty of hon. gentlemen opposite under English precedents, I refer the House to "Todd," vol. I, page 758, to show that when the last Government appealed to hon. gentlemen opposite to vote, if not the whole of the Estimates, that portion which was required to pay the civil service, the proposition should have been accepted. That authority says:

Votes "on account" were formerly restricted to occasions of unexpected emergency, arising

out of ministerial changes, when it was desirable to place at the disposal of the Government funds for the public service without specifically appropriating the same to particular items of expenditure. In such cases it is usual to grant a portion only of the yearly Estimates, and in the following session to inquire into the expenditure thereof, in order to ascertain that it was duly appropriated to legitimate purposes. When Parliament is about to be dissolved, upon a ministerial crisis, it is obviously improper to call upon the House of Commons to vote either the full amount or all the details of the proposed Estimates, and so commit the country to the financial policy of Ministers whose fate is about to be determined by the general election. The duty of finally deciding upon these Estimates should be reserved for the new House of Commons. Meanwhile the supply of credit should be restricted to such an amount as may be absolutely required for the public service, until the reassembling of Parliament, and the vote "on account" should not be regarded as in any degree pledging the House to an approval of the entire Estimates.

I fully concur in that expression of opinion, but the case under discussion at the present time does not by any means fall under that head; it is one placed outside of those cases when the fate of outgoing ministries is about to be determined at the general elections. Todd continues:

Within the last few years, however, the practice of taking votes "on account" has become general. This is owing to the introduction of a new rule, making all grants in supply applicable only to "payments to be made within the financial year," and requiring the Government to surrender into the exchequer, at the end of the year, all unexpended balances.

This plainly indicates that without at all pledging themselves to the Estimates as prepared by the then Finance Minister, without in any way changing their views as to having confidence or want of confidence in the Government of the day, they could have consented, as we proposed to them privately across the House on more than one occasion, to have voted the Estimates required for the service for which they subsequently called upon His Excellency to issue a warrant. That is my contention, and that is the precedent which is being followed in England to-day. Further, it is the precedent which has been followed in Canada within my own recollection, for when during the time I occupied the position of Minister of Militia, the troubles in the North-west arose, Parliament voted \$1,700,000 without pledging itself to approve of the expenditure or not, but it was an emergency for which Parliament considered a grant should be immediately made. A similar case could not arise in England for the reason that emergencies are there provided for in a different way, as I shall be able to show. In Canada it has been the custom for Parliament to vote money which was required to meet certain services which were not objected to by either party. The salaries of the civil servants are fixed by statute, and the Government of the day even if it chose

to, could not divert the money voted by Parliament for that purpose towards any other channel. Hence it is that I charge the Opposition of last year with being responsible for all this difficulty on account of their unconstitutional action in refusing to vote supplies last year for the public service. I have quoted from Todd as to the English precedents, and in relation to the Canadian practice, Bourinot says :

Votes "on account of" particular services, now quite common in the English House, have only been necessary on one occasion from 1867 to 1891.

I think that is the instance to which I referred when I was acting as Minister of Militia, and when money was required for the purpose of meeting the expenses of the rebellion in the North-west.

On the eve of dissolution, in case of a ministerial crisis, or at other times in anticipation of particular grants or classes of service, the Imperial Parliament has allowed votes "on account." Such a course has now become necessary every session, "in consequence of the increased strictness in the audit of public accounts and the difficulty of securing the consideration of the estimates in due time." "It is an established rule," says a high authority, "that a vote on account should involve no new principle, but should merely provide for the continuation of services which had been sanctioned in the previous year ; and it is the practice not to take more than two or three months' supplies, except in certain particular cases of public emergency."

The proposition submitted by the Government last year was that the Opposition should vote a sufficient sum of money to pay the civil service during the period of time between the elections and the meeting of the House again.

"So that the committee in agreeing to vote on account are not pledged to the estimates for the year in anticipation of the opportunity to be afterwards afforded of voting them in detail." In Canada, as the fiscal year ends on the 30th June, and Parliament generally assembles in the month of January, or, at least, months before the appropriations for public service are exhausted, the necessity for votes on account can only arise under exceptional conditions. In 1891, Parliament met on the 29th of April, and it became necessary when the first of July was passed to meet the exigencies of the public service. One-tenth of the annual Estimates was passed without discussion, and included with all the resolutions previously passed in an Appropriation Act, which immediately received the royal assent. Subsequently one-fifth was voted in the same way. Finally the sums necessary to complete the amounts required for the service of the year were voted after the usual full discussion.

Therefore the course followed by Her Majesty's loyal Opposition last year is in direct opposition to these precedents, and was, as I believe, an invasion of parliamentary rights. It is so serious an invasion of the constitution, that it is our duty to bring the question up in the House, even though we should meet with the censure of the hon. member for North Norfolk (Mr. Charlton)

who charges us with delaying the session. When the present Government came into power they were face to face with a great difficulty which they themselves had created by their unconstitutional course last year, and in order to overcome the difficulty they again had recourse to an unconstitutional practice to raise large sums of money which had not been provided for by a vote of Parliament. I must, at the risk of being tedious, read the statute which I contend that hon. gentlemen have misinterpreted, and I shall also read the opinions of eminent men upon that statute. I shall read the opinions of some whose absence we regret and who, from their constitutional knowledge and experience, have left on record their opinions, which hon. gentlemen who to-day for the first time in eighteen years occupy the Treasury benches, may well refer to, and learn, and be guided by. The legal authority for the issue of Governor General's warrants is to be found in the Revised Statutes, chap. 29, sec. 32, and I shall read it.

Mr. MCGREGOR. Dispense.

Sir ADOLPHE CARON. I should like to oblige the hon. gentleman by dispensing. On one occasion when the present Prime Minister was leader of the Opposition, I tried to dispense with reading what I thought hon. gentlemen on both sides knew, but the present Prime Minister insisted upon my following the rule, and therefore I do not think I can oblige my hon. friend (Mr. Lister) who is sitting in the Prime Minister's seat, by dispensing with reading this clause of the Act.

Mr. LISTER. I did not ask you to dispense. I shall be glad to hear you read. Do not charge me with it.

Sir ADOLPHE CARON. I thought you had said "dispense." The clause of the Audit Act to which I have referred, reads :

If, when Parliament is not in session, any accident happens to any public work or building which requires an immediate outlay for the repair thereof, or any other occasion arises when any expenditure not foreseen or provided for by Parliament is urgently and immediately required for the public good, then, upon the report of the Minister of Finance and Receiver General that there is no parliamentary provision, and of the Minister having charge of the service in question that the necessity is urgent, the Governor in Council may order a special warrant to be prepared, to be signed by the Governor General for the issue of the amount estimated to be required, which shall be placed by the Minister of Finance and Receiver General to a special account against which cheques may issue from time to time, in the usual form, as they are required.

Thus, in 1887, Sir Richard Cartwright admitted that the lapsed balances of votes that had been discussed in Parliament might be extended under a Governor General's warrant. Also that a legal award against the Government might be provided for in this manner. But he raised the point for dis-

cussion. The House met on April 13, 1887; and it appeared that nearly \$500,000 had been paid by Governor General's warrant, bearing date 14th April, the day after the House met. He contended that the Governor General's warrant could only issue "when Parliament is not in session" as the language of the statute has it. Sir John Macdonald contended, in reply, that if the order for the money is given previous to the meeting of Parliament:

The fact that the warrant, the mere paper, is not signed until afterwards is a matter of no consequence whatever. It is like the appointment of a man to hold any office under the Crown. The moment the Order in Council says he is appointed, he holds his office, although the commission may not issue for twenty years afterwards.

Mr. Davies said:

The main objection which has been urged is not that the ministerial act of signing the warrant took place after the meeting of Parliament and after a proper Order in Council had been passed. That is a mere ancillary point, and may or may not be correct. I am disposed to think myself that if a proper Order in Council had been passed, the mere affixing of the signature of the Governor General while Parliament is in session might not invalidate it.

Mr. Blake pointed out that:

Urgency and the necessity for immediate action for the public good are the elements which give to the Administration power to act.

And as to the question of date of signing the warrant, he pointed out that:

The spirit of the Act is that of the public good imperatively requires money to be expended, in respect of which the condition of things renders it impossible that Parliament should be consulted and its consent obtained, the Government may issue special warrants for such expenditures during recess; but that cannot be said in reference to certain expenditures for which the Orders in Council were passed just before the 13th April, so late that the warrants could not be issued in time to have them out before Parliament.

In 1891, Sir Richard Cartwright laid down the general rule of interpretation thus:

It is scarcely necessary for me to point out that the obvious meaning of this clause is, that when an occasion arises when any expenditure which cannot fairly be foreseen by the department, or provided for by Parliament, is urgently and immediately required, then and then only, is it intended that such a warrant should be issued.

In the same debate, the Finance Minister, Mr. Foster, gave the statute the following interpretation:—

As to the general principle which the Government ought to pursue in regard to these expenditures, I thoroughly agree with my hon. friend. A Governor General's warrant ought not to be used except for an urgent and necessary purpose, but if an error occurs, and a branch of the public service must be stopped unless appropriations are made which Parliament would have given but for the error, there is no choice between the two

alternatives. The warrant must be issued and the money must be made available.

It will be observed that although Mr. Foster alleges "perfect agreement" with Sir Richard Cartwright, his views are, like the views of Sir John Macdonald, totally opposed to those of Sir Richard, and of Mr. Davies, &c. There are in fact two separate and conflicting canons of criticism as to the meaning of the clause under which the warrants are issued. In England it is the practice to take grants on account for the civil service every year, and sometimes more than once during the session when the pressure of parliamentary affairs has prevented the passing of the whole Estimates. In urgent cases requiring immediate relief, or when, on grounds of public policy secrecy is advisable, the Government can have recourse in the first instance to the "civil contingencies" or the "treasury chest funds." Todd states the practice as follows:—

If the Comptroller General is empowered, as we have seen, to interpose his authority, and forbid the issue of any money, except such as may be asked for by the Treasury under the express authority of Parliament, how is it that the Government are able to obtain possession of the means to incur extraordinary expenditure, without a previous Act of appropriation? The wisdom of Parliament has itself provided for this contingency. "The public interests require that the Government should possess the power of incurring expenses of indispensable necessity, although Parliament may not have previously provided for them. * * * * Unforeseen events may happen, and lead to an expenditure beyond the provision made by Parliament for the ordinary service of the year; and it must be for the interest of the public, that no delay should occur in taking the necessary measures, and in defraying the expenses which such events may entail." There is, accordingly, a fund called the "Treasury Chest Fund," which is maintained for the purpose of supplying the specie required for the "Treasury Chest" in the several colonies, and for making the necessary advances for carrying on the public service at home and abroad. By the Act 40 and 41 Vict., c. 45, this fund, formerly £1,300,000, is now limited to £1,000,000. It is authorized to be employed by the Treasury in making temporary advances for any public service; to be repaid out of money appropriated by Parliament to such service, or out of other money applicable thereto. The governors of colonies have authority, in cases of emergency, to pay advances out of the treasury chest, to be made good out of votes in supply. This unavoidably occasions an expenditure, in certain cases, which has not been authorized by Parliament, but the earliest opportunity is taken to explain the transaction to the House of Commons.

There is also another fund, which was created in 1862, pursuant to the recommendations of the Committee on Public Accounts, in the previous year. It is called the "Civil Contingencies Fund," and is limited to £120,000. The Treasury are empowered to draw on this fund from time to time, to defray new and unforeseen expenditure for civil services at home, for which no votes had been taken, or to meet unforeseen deficiencies on ordinary votes. But every advance made out of these funds must be repaid out of votes to be

taken in Parliament, in the following year, on behalf of the service for which such advances had been made. No expenditure whatever is allowed to be finally charged against either of these funds. The "Civil Contingencies Fund" has been set apart by the Treasury as a substitute for the irregular items previously included in the estimates under the head of "Civil Contingencies," and which had frequently to be voted after the expenditure had been incurred. The creation of this fund has been formally approved of by the Committee on Public Accounts; and there is no reason to doubt that the sanction of the legislature, which is certainly required to make it legally available for public purposes, would, if applied for, be readily granted.

I think it my duty further to refer to what seems to me to be the real key to the situation, and what to my mind explains exactly the conditions under which these warrants may be issued:

Or any other occasion arises when an expenditure not foreseen or provided for by Parliament is urgently and immediately required for the public good.

I know, and nobody who has followed this interesting discussion can ignore, that hon. gentlemen opposite, and some whose opinion is certainly entitled to great consideration and respect, have contended that in this case "or" does not mean "and." Well, Sir, if "or" does not mean "and" in this case, the constitution would be giving to the Government of the day a power which it could never have contemplated. It could never have contemplated to leave to the Executive the interpretation of what is provided for and what is not provided for. The representatives of the people might in their wisdom consider that certain expenditures should not be provided for; and the Government of the day might, after the session, turn around and call upon His Excellency to issue his warrant for those expenditures assigning as a reason that they had not been provided for by the vote of Parliament. So that I cannot for one moment believe that there can be a difference of opinion that to justify the issue of a Governor General's warrant the expenditure must be not foreseen and not provided for by Parliament. This is according to my interpretation and reading, in the light in which I read the discussions contained in our Canadian "Hansard," giving the opinions of men whose opinions are deserving of great consideration and respect. If the interpretation were different from what I state, then it would be impossible for me to understand that the people, as represented by their representatives in Parliament, are the sole masters of the expenditure of public money. But, Sir, questions as to the interpretation of this clause have arisen on more than one occasion and in more than one debate. In the debates of 1887, volume 1, page 258, it will be found that in that year Sir Richard Cartwright admitted that the lapsed balances of votes of Parliament might be expended under a Governor General's warrant

and that a legal award against the Government might be provided for in this manner; but he raised this point, which is very close to the point under discussion to-day. The House met on April 13th, and it appeared that nearly \$500,000 had been paid by Governor General's warrants, bearing date the 14th of April, the day after the House met. He contended that the Governor General's warrant could only issue when Parliament is not in session, as the language of the statute has it. The point made by Sir John Macdonald at the time will be remembered by hon. gentlemen. He agreed with the hon. Minister of Trade and Commerce (Sir Richard Cartwright) upon the point that the warrants should not be issued except when Parliament was not sitting, that is, during the recess of Parliament; but he said that the fact of the Order in Council having been signed previous to the meeting of Parliament was quite sufficient. He assimilated this case to the case of a man who was appointed by Order in Council to a position under the Government, but who had not received his commission, saying that the moment the Order in Council passed, this person held office, although the commission might not issue for twenty years afterwards. Mr. Davies said:

The main objection which has been urged is not that the ministerial act of signing the warrant took place after the meeting of Parliament and after a proper Order in Council had been passed. That is a mere ancillary point, and may or may not be correct. I am disposed to think myself that if a proper Order in Council had been passed, the mere affixing of the signature of the Governor General while Parliament is in session might not invalidate it.

Mr. Blake pointed out that "urgency and the necessity for immediate action for the public good are the elements which give to the Administration power to act."

Some hon. MEMBERS. Hear, hear.

Sir ADOLPHE CARON. Hon. gentlemen say "Hear, hear." I want to know where is the urgency. If they would substitute for the word "urgency" the word "inconvenience," I would agree with them. But where was the urgency when the Government had already received a warrant from His Excellency and when, the day before Parliament met, and before they had expended the whole amount, they asked for a new warrant from the Governor General for a million dollars? I do not think I am presuming when I say that if these hon. gentlemen had waited another day and asked this Parliament to vote this million dollars on the ground that it was required to pay the civil service, there would not have been a dissenting voice on this side to so reasonable a proposition. Let me say that I, probably from my long training as a Conservative, believe that encroachments upon the constitutional rights of the people should be

guarded against in every way possible. If we look back to the noblest pages of our history, we find that men like Morin and Lafontaine, Baldwin and Howe, and the other fathers of constitutional government in Canada, made their names household words by the gallant and successful fight which they made against the encroachments of the Crown on the privileges of the people. Every student of our history knows of the difficulties that arose between the Governors of Canada under the old regime, who wished to expend the public money on what they would no doubt call their warrant, and the men whom I have mentioned who resisted these encroachments of the Crown on the privileges of the people. To-day it seems to me that we in Opposition are fighting against the encroachments of the advisers of the Crown on the rights and privileges of the people's representatives. I, for one, voicing my feelings and those, I believe, of the people of my province, declare that these great constitutional battles, which were fought upon constitutional grounds, are too fresh in the recollection of our people for us to allow this encroachment by the present Government on our constitutional rights to pass without most vigorous protest on our part. Sir, I hold that the practice which has been followed by this Government on this occasion is a most dangerous one; and in raising my voice in protest I do not do so merely for the purpose of opposing the Government or of delay—

Some hon. MEMBERS. Hear, hear.

Sir ADOLPHE CARON. Hon. gentlemen say "Hear, hear," but I do express my opinions frankly and honestly, and I say that my protest is not for the purpose so much of opposing the Government or of delaying, as we have been accused of delaying, the close of the session, but for the purpose of defending those rights which we hold sacred and which I, for one, will not allow to be interfered with if I can possibly prevent it. Could it be the intention of Parliament to allow the Executive to dispose of large sums of money which had not been provided for by Parliament? If that were the case, any Government could, for the purpose of obstruction, nullify the wish of the people of this country. They could wait until Parliament was prorogued, and then, following out the contention of hon. gentlemen on the other side, ask for Governor General's warrants to meet the public expenditure on the ground that these expenses had not been provided for. They could thus call upon the Governor General to issue his warrant and dispose of the people's money without the sanction of Parliament.

Mr. GIBSON. How did you pay the \$100,000 of the Curran Bridge after Parliament was over?

Sir ADOLPHE CARON. The hon. gentleman is more familiar with bridges than I

am. I am talking of constitutional questions, and I can understand that the hon. gentleman could better discuss the bridge question than the constitutional point. I might tell the hon. gentleman something about the \$100,000, but he seems to know all about it; and when the hon. gentleman addresses himself to this Parliament to enlighten it upon this constitutional question, he might, as a diversion, slip in the question of the \$100,000 for the bridge. I feel a good deal of sympathy for the supporters of the Government. Through the unconstitutional method which was adopted by hon. gentlemen opposite last session, when they refused our reasonable proposition to vote a grant of money sufficient to meet the public expenditure until this House could be called together—which did not involve anything like the total estimates and did not commit hon. gentlemen opposite to any policy—they have found themselves placed in a most disagreeable position. These hon. gentlemen supporting the Government found themselves called upon to justify the unconstitutional act of the Government in paying out large sums which were not voted by Parliament and in violating the undoubted privilege of Parliament by issuing Governor General's warrants, when there was no necessity or constitutional right for so doing. I have addressed myself to that branch of the subject already, and I will not take up the time of the House by going into that question again. If hon. gentlemen were not controlled by party allegiance—and who can blame them for being so controlled in a Parliament in which party government is recognized—there would not be found one hon. gentleman who would not vote against the issuing of warrants of the Governor General and in favour of the maintaining of the privileges of this House, as provided under the constitution, properly interpreted. The exclusive right of Parliament is to initiate these votes of money; and the cases when that exclusive right can be interfered with must be jealously guarded by those who represent the people, because the opposite course is subversive of the very principles of the constitution under which we live, and which has made Canada a free and happy country. Sir, the points which we have considered it our duty to submit to the House, involve one of the greatest questions which has ever been brought before Parliament. The great principle at stake, as I understand it, is the supremacy of Parliament, as against the usurpation of its powers by the Executive. I am prepared to defend any measure that can be constitutionally adopted for the purpose of protecting the civil service against any suffering or trouble by reason of the failure to pay their salaries at the proper moment, and to achieve that end I would be prepared to overlook, to a great extent, this action of the Government, if it were not that I believe that action to be absolutely unconstitutional. It would have been

proper for hon. gentlemen opposite, when Parliament met, to ask us on your left, Mr. Speaker, to consent to a vote for the purpose of meeting this expenditure. Considering the battles that have been fought on this question, session after session, and considering the strong ground taken by hon. gentlemen opposite, when in opposition, against the issuance of Governor General's warrants except in cases of absolute necessity, it seems almost impossible to believe that on assuming office their very first act should be in direct opposition to all that they had professed, when sitting on this side. This will show the people of Canada

more clearly than anything can do that these hon. gentlemen are not prepared to carry out on the Treasury benches what they advocated when in opposition. I regret to have taken up the time of the House, but I feel strongly and deeply upon this question of the rights and privileges of this House ; and, though prepared to respect the Executive and the advice given by the officers of the Crown to the Crown, I am not prepared to yield a single inch on a question involving the rights of the people, in order to accommodate views that may be entertained by hon. gentlemen opposite.

